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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,825	08/25/2003	Yoshinao Nagashima	240950US0DIV	1353

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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GEMBEH, SHIRLEY V

ART UNIT	PAPER NUMBER
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1618

NOTIFICATION DATE	DELIVERY MODE
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08/18/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/646,825	<b>Applicant(s)</b> NAGASHIMA ET AL.	
	<b>Examiner</b> SHIRLEY V. GEMBEH	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20,21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/18/09 has been entered.

2. Claims 20-21 and 23-25 are pending. Claim 22 has been cancelled.

3. The rejection of claims 20-21 and 24 rejected under 35 U.S.C. 102(b) as being anticipated by Surburg et al. (US 6420,334) is withdrawn based on Applicant's argument that Surburg is not prior art.

4. The rejection of claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surburg et al. (US 6,420,334) in view of Zaunbrecker et al. (US 5,955,034) is withdrawn based on Applicant's argument that Surburg is not prior art.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20-21 and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrases "having no odor above a detectable threshold" and "substantially odorless" render the claims indefinite because it is unclear the metes and bounds envisioned by these relative terms. The claims do not recite a reference and threshold value or the space to determine any threshold value. Nor is the population required to detect any odor defined. For example the detection of odor in dogs is quite different from that of humans, etc.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Isaac et al. (US 3,932,533).

Isaac teaches isolation of pure  $\alpha$ -bisabolol with the odor successfully removed by distillation (i.e., distillation is a form of vaporization system with heat; see col. 1, line 22-23, col. 2, line 65-68 and col. 3, lines 60-64 as it relates to claims 20 and 25). Therefore the limitation for a vaporization system and "purity having no odor" is reasonably met. With regards to claim 23 wherein the concentration in air is from 0.01-100 ppb, based

Art Unit: 1618

on the size of the room and the initial concentration of  $\alpha$ -bisabolol being distilled, it is anticipated that the concentration in air will encompass from 0.01-100 ppb, depending on the volume of air measured.

7. Claims 20-21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Zaunbrecker et al. (US 5,955,034) already of record.

Zaunbrecker et al. teach air freshener candles with cedrol as the sesquiterpene alcohol wherein heat generated under candle burning conditions constitutes a vaporization system (see abstract and col. 3, lines 36-37 as required by claims 20, 21, 23, 24). Zaunbrecker et al. teach the freshener agent is in a concentration of 0.05% (see col. 2, lines 7-8 9). Because cedrol is an extract from the bark of wood, Zaunbrecker's extracted cedrol is "of a purity having no odor above a detectable threshold" when heated, based on the concentration and size of the room/area, the concentration in air is anticipated to encompass from 0.1-100 ppb. It should be noted that the concentration in air is relative to the area being measured. For example, the same concentration of cedrol in the lamp placed in a stadium will have no odor ("substantially odorless") relative to the position of the individual placed in the area as required by new claim 25.

8. No claim is allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL HARTLEY can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. V. G./  
Examiner, Art Unit 1618  
8/6/09

/Robert C. Hayes/  
Primary Examiner, Art Unit 1649